RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Desert Hot Springs
Attn: City Clerk
65-950 Pierson Blvd
Desert Hot Springs, CA 92240

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

(Exempt from recording fees pursuant to Government Code Sections 6103 and 27383)

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF DESERT HOT SPRINGS AND DESERT LAND VENTURES III LLC

ARTICLE 1. PARTIES AND DATE.

This Development Agreement ("Agreement") is dated _____, for execution purposes only and is entered into between (i) the City of Desert Hot Springs ("City"), a California municipal corporation, and Desert Land Ventures III, LLC ("DLV III") (ii) ("Owner"), a California Limited Liability Corporation. This Agreement shall become effective on the Effective date defined in Section 3.1.10 below.

ARTICLE 2. RECITALS.

2.1 WHEREAS, the City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Government Code Section 65864, *et seq*.;

and

2.2 WHEREAS, the City has adopted rules and regulations for consideration of development agreements pursuant to Government Code Section 65865, and as further set forth in DHSMC Chapter 17.84; and

2.3 WHEREAS, the Owner voluntarily enters into this development agreement after extensive negotiations and proceedings have been taken in accordance with the rules and regulations of the City, Owner has elected to execute this Agreement as it provides Owner with important economic and developmental benefits; and

2.3 WHEREAS, this Agreement and the Project are consistent with the City's General Plan and Zoning Code and applicable provisions of the City's Zoning Map as of the Effective Date; and

2.4 WHEREAS, all actions taken and approvals given by the City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

2.5 WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project and generally serve the purposes for which development agreements authorized under Government Code Sections 65864 *et seq*. are intended; and

2.6 WHEREAS, on the City Council of the City of Desert Hot Springs ("City Council") approved the ordinance approving and adopting this Agreement; and

2.7 WHEREAS, in implementation of the promulgated state policy to promote private participation in comprehensive planning and to strengthen the public planning process and to reduce the economic risk of development, the City deems the implementation of this Agreement to be in the public interest and intends that the adoption of this Agreement be considered an exercise of the City's police powers to regulate the development of the Property during the term of this Agreement; and

2.8 WHEREAS, this Agreement is consistent with the public health, safety and welfare needs of the residents of the City and the surrounding region. The City has specifically considered and approved the impact and benefits of the development of the Property in accordance with this Agreement upon the welfare of the region; and

2.9 WHEREAS, Owner intends to develop a Marijuana Facility, to include a marijuana dispensary or dispensaries, cultivation, manufacturing, testing, and distribution, to the extent contemplated by the, Development Approvals pursuant to DHSMC Chapters 17.180 Marijuana Facilities Operation and Location, 3.35 Medical Marijuana Cultivation Tax, and 5.50 Marijuana Facilities Regulatory Permit and all applicable state

laws, rules, and regulations.

2.10 WHEREAS, this Agreement, in the future, shall be read consistent with the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") as that Act may be amended from time to time. This Agreement shall govern the conduct of this business to dispense, cultivate and distribute marijuana under MAUCRSA, consistent with any City regulations not preempted by MAUCRSA or other statewide regulations which may be adopted or amended from time to time.

ARTICLE 3. GENERAL TERMS.

3.1 Definitions and Exhibits. The following terms when used in this Agreement shall be defined as follows:

3.1.1 "Agreement" means this Development Agreement.

3.1.2 "City" means the City of Desert Hot Springs, a California municipal corporation.

3.1.3 "Days" mean calendar days unless otherwise specified.

3.1.4 "Development" includes the right to maintain, repair or reconstruct any private building, structure, improvement or facility after the construction and completion thereof; provided, however, that such maintenance, repair, or reconstruction take place within the term of this Agreement on parcels subject to it.

3.1.5 "Development Approvals" means all permits, licenses, and/or other entitlements for the Development of the Property, including any and all conditions of approval, subject to approval or issuance by the City in connection with Development of the Property including:

(i) General Plan amendments;

(ii) Zoning;

(iii) Tentative and final subdivision and parcel maps;

(iv) Conditional use permits;

(v) Design review approvals;

(vi) Site Plans;

(vii) Demolition, grading and building permits;

(viii) Comprehensive Security Plan;

(ix) Specific Plan; and

(x) Any environmental approvals and certifications. The term "Development Approvals" specifically includes this Agreement.

3.1.6 "Development Exactions" mean, except as otherwise provided in this Agreement, all exactions, in lieu of fees or payments (including, but not limited to, capital facilities fees, and service connection fees), Dedication, or reservation of land requirements, obligations for on-site or off-site improvements or construction requirements of a type not normally regarded as subdivision improvements (i.e., those having a nexus to the particular subdivision), or impositions made under other rules, regulations, or official policies of the City or in order to make a project approval consistent with the City's General Plan, including without limitation, any requirements of the City in connection with or pursuant to any Land Use Regulation or Development Approval for the development of land, and the construction of improvements for public facilities. Development Exactions shall not include filing fees or other Processing Fees.

3.1.7 "Development Milestones" means those events set forth in Exhibit C, which have been bundled in three groups as "Milestone 1," "Milestone 2" and "Milestone 3."

3.1.8 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property for the Project, as modified and supplemented by Subsequent Development Approvals.

3.1.9 "DHSMC" means the City of Desert Hot Springs Municipal Code.

3.1.10 "Effective Date" means the date on which all of the following are true: (i) thirty (30) days have elapsed since the second reading of the Ordinance adopting and approving this Development Agreement and (ii) all Exhibits to this Agreement are finalized, executed by all affected parties (if applicable) and attached hereto; provided, however, that if these conditions have not been fully satisfied by the Owner the Effective Date may not thereafter occur and this Agreement may not thereafter become effective.

3.1.11 "Existing Development Approvals" means all Development Approvals approved or issued prior to or on the Effective Date. Existing Development Approvals include the approvals set forth in Section 3.1.6 and all other approvals which are a matter of public record prior to or on the Effective Date.

3.1.12 "Existing Land Use Regulations" means all Land Use Regulations in effect on the date after the date of execution. Existing Land Use Regulations include all regulations that are a matter of public record on the date of execution as they may be

modified by the Existing Development Approvals. Alternatively, at the written election of the Owner, or all Owners if more than one, the phrase "Existing Land Use Regulations" means all Land Use Regulations in effect on the date after specified in the notice of election to City. Notwithstanding the foregoing, Existing Land Use Regulations include the regulations set forth in SB-94.

3.1.13 "Land Use Regulations" means all ordinances, resolutions and codes adopted by the City governing the development and use of land, including the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or Dedication of land for public purposes, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Development of the Property.

"Land Use Regulations" do not include any City or City-agency ordinance, resolution or code governing any of the following:

(i) The conduct or licensing of businesses, professions, and occupations;

(ii) Taxes and assessments of general application upon all residents of the City;

(iii) The control and abatement of nuisances;

(iv) The granting of encroachment permits and the conveyance of rights and interests that provide for the use of or the entry upon public property; and

(v) The exercise of the power of eminent domain.

3.1.14 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender and its successors-in interest.

3.1.15 "Owner" means DLV III, a California Limited Liability Corporation and its permitted successors in interest to all or any part of the Property.

3.1.16 "Processing Fees" means the normal and customary application, filing, plan check, permit fees for land use approvals, design review, tree removal permits, building permits, demolition permits, grading permits, and other similar permits and entitlements, and inspection fees, which fees are charged to reimburse the City's expenses attributable to such applications, processing, permitting, review and inspection and which are in force and effect on a general basis at such time as said approvals, permits, review, inspection or entitlements are granted or conducted by the City.

3.1.17 "Project" means the Development of the Property contemplated by

the Development Plan, as such Development Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement. The Project shall consist of this Development Agreement, the Development Plans, any and all entitlements licenses, and permits related to the Project, any and all licenses.

The Project will be for the indoor cultivation, manufacturing, testing, and distribution, to the extent contemplated by the, Development Approvals, of medical marijuana located on the Property that will be licensed and permitted in full accordance with the City of Desert Hot Springs Medical Marijuana Ordinance as amended as well as in full compliance with all state law, including but not limited to MAUCRSA (also known as SB-94). This Project shall include the cultivation, manufacturing, testing, and distribution, of recreational marijuana in accordance with State law. The Project will include construction and development of the Project that will be licensed and permitted in full accordance with the City of Desert Hot Springs Medical Marijuana Ordinance as amended as well as in full compliance with all state law, including but not limited to the Medical Marijuana Regulation and Safety Act.

3.1.18 "Property" means the real property described on Exhibit A and shown on Exhibit B, both attached hereto and incorporated herein by this reference.

3.1.19 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to the Owner under this Agreement and reserved to the City as described in Section 4.4.

3.1.20 "Subsequent Development Approvals" means all ministerial Development Approvals required subsequent to the Effective Date in connection with development of the Property, including without limitation, subdivision improvement agreements that require the provision of bonds or other securities. Subsequent Development Approvals include, without limitation, all excavation, grading, building, construction, demolition, encroachment or street improvement permits, occupancy certificates, utility connection authorizations, or other non-discretionary permits or approvals necessary, convenient or appropriate for the grading, construction, marketing, use and occupancy of the Project within the Property at such times and in such sequences as Owner may choose consistent with the Development Plan and this Agreement.

3.1.21 "Subsequent Land Use Regulations" means any Land Use Regulations defined in Section 4.6 that are adopted and effective after the Effective Date of this Agreement.

3.2 Exhibits. The following documents are attached to and, by this reference, made part of this Agreement:

Exhibit A – Legal Description of the Property.
Exhibit B – Map showing Property and its location.

3.3 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Subject to the Owner's receipt of all Development Approvals relative thereto, the Development of the Property is hereby authorized and shall, except as otherwise provided in this Agreement, be carried out only in accordance with the terms of this Agreement and the Development Plan. In the event of conflict or uncertainty between this Agreement and the Development Plan, the provisions of the Development Plan shall control.

3.4 Ownership of Property. The Owner represents and covenants that it has a legal or equitable interest in the Property, which has Assessor's Parcel Numbers of 669-150-001 and 669-150-002..

3.5 Term. The parties agree that the Term of this Agreement shall be forty (40) years commencing on the Effective Date subject to the extension and early termination provisions described in this Agreement. Upon termination of this Agreement, this Agreement shall be deemed terminated and of no further force and effect without the need of further documentation from the parties hereto, provided, however, that this termination shall not affect any right or duty arising from the entitlements or approvals for the Project or the financial obligations of Owner or its assignees and successors in interest agreed to by the parties or approved concurrently with, or subsequent to, the Effective Date or as otherwise provided in this Agreement.

3.5.1 Term Extension. This Agreement may be extended for three (3) additional ten (10) year periods following the expiration of the initial forty (40) year term upon the occurrence of all of the following:

(i) The Owner shall give written notice to the City no later than one hundred twenty (120) days before the expiration of the initial forty (40) year term that the Owner desires to extend this Agreement for the additional ten (10) year period;

(ii) At the time of the notice described in (i) above, there is no hearing pending under Article 8; provided, however, that the term of this Agreement shall be extended during and for the period of the pendency of any hearing (including any continuances or extensions thereof) conducted under Article 8, if at the conclusion of that hearing, it is determined that the Owner was not in breach of this Agreement;

(iii) The Owner shall not be in default of any provision of any agreement between City and Owner relative to the Development of the Property or of any condition of approval imposed upon any entitlement granted by the City relative to the Development of the Property for which Owner has been given a written notice to cure by the City and for which Owner has not cured or commenced to cure such default within thirty (30) days, if and as provided by such other agreement or condition of approval; and

(iv) The City finds that extending the agreement will be in the public interest.

3.6 Amendment or Cancellation of Agreement. This Agreement may be amended, modified or canceled in whole or part only by the following means:

(i) Pursuant to Government Code Section 65869.5, as necessary to comply with state or federal laws or regulations enacted after the Effective Date; provided, however, that this Agreement shall remain in full force and effect to the extent the remaining provisions are not inconsistent with such laws or regulations and to the extent such laws or regulations do not render the remaining provisions of this Agreement impractical to enforce; or

(ii) By mutual written consent of both the City and the Owner pursuant to Government Code Section 65868, following all required public notices and hearings and City Council approval.

3.7 Automatic Termination. This Agreement shall automatically terminate upon the occurrence of any of the following events:

(i) Expiration of the term of this Agreement as set forth in Section 3.5;

(ii) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement;

(iii) The adoption of a referendum measure pursuant to Government Code Section 65867.5 overriding or repealing the Ordinance;

(iv) The entry of a final judgment (or a decision on any appeal there from) voiding the City's General Plan or any element thereof, which judgment or decision would preclude development of the Project, but only if the City is unable to cure such defect in the General Plan or element within three hundred and sixty-five (365) days from the later of entry of final judgment or decision on appeal.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination, or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination, or with respect to any obligations which are specifically set forth as surviving this Agreement.

3.8 Notices.

3.8.1 Notice Defined. As used in this Agreement, notice includes, without limitation, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

3.8.2 Written Notice and Delivery. All notices shall be in writing and shall be considered given:

(i) when delivered in person to the recipient named below; or

(ii) three days after deposit in the United States mail, postage prepaid, addressed to the recipient named below; or

(iii) on the date of delivery shown in the records of the delivery company after delivery to the recipient named below; or

(iv) on the date of delivery by facsimile transmission to the recipient named below if a hard copy of the notice is deposited in the United States mail, postage prepaid, addressed to the recipient named below. All notices shall be addressed as follows:

If to the City:

City Manager
11999 Palm Dr.
Desert Hot Springs, CA 92240

If to the Owner:

Desert Land Ventures III LLC
Richard Sax
Principal
2100 Palomar Airport Rd., Suite 209
Carlsbad, CA 92011
With Copies to:

Sean Matsler
Manatt, Phelps & Phillips, LLP
695 Town Center Drive, 14th Floor
Costa Mesa, CA 92626

3.8.3 Address Changes. Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3.9 Validity of this Agreement. The Owner and the City each acknowledge that neither party has made any representations to the other concerning the enforceability or validity of any one or more provisions of this Agreement.

ARTICLE 4. DEVELOPMENT OF THE PROPERTY.

4.1 Right to Develop. The Owner shall, subject to the terms of this Agreement and throughout its Term, have a vested right, but not the obligation, to develop the Property with the Project including, but not limited to, (i) a marijuana dispensary or dispensaries, provided that said dispensary or dispensaries are in partnership with one or more existing City-approved CUP dispensary licenses or an approved new license is issued by the City, (ii) a marijuana cultivation facility, (iii) a marijuana manufacturing facility, (iv) a marijuana testing facility, and/or (iv) a marijuana distribution facility, to the extent contemplated by the Development Approvals pursuant to DHSMC Chapters 17.180 Marijuana Facilities Operation and Location, 3.35 Medical Marijuana Cultivation Tax, and 5.50 Marijuana Facilities Regulatory Permit and all applicable state laws, rules, and regulations in accordance with and to the extent of the Development Plan, subject to the Reservations of Authority. The Property shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. In addition, Owner shall be allowed to cultivate, and to the extent contemplated by the, Development Approvals, allowed to process, manufacture, distribute, dispense and test marijuana for recreational uses.

Except as otherwise provided in this Section 4.1, the permitted uses of the Property, the density and intensity of use, the lot area standards, the maximum height and size of proposed buildings, and provisions for reservation and Dedication of land for public purposes and other terms and conditions of Development applicable to the Property shall be those set forth in the Development Approvals.

4.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided by this Agreement, the rules, regulations and official policies and conditions of approval governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement, occupancy and construction standards and specifications applicable to development of the Property shall be the Development Plan. Provided, however, that in approving tentative subdivision maps, the City may impose ordinary and necessary dedications for rights-of-way or easements for public access, utilities, water, sewers and drainage, having a nexus with the particular subdivision; provided, further, that the City may impose and will require normal and customary subdivision improvement agreements and commensurate security to secure performance of the Owner's obligations there under.

4.3 Changes to Project. The parties acknowledge that changes to the Development Approvals may be appropriate and mutually desirable. City shall act on

such applications, if any, in accordance with the Existing Land Use Regulations, subject to the Reservations of Authority, or except as otherwise provided by this Agreement. If approved, any such change in the Development Approvals shall be incorporated, and may be further changed from time to time as provided in this Section 4.3. This Agreement shall not prevent the City, in acting on such application(s) from applying Subsequent Land Use Regulations that do not conflict with the Development Plan, nor shall this Agreement prevent the City from denying or conditionally approving the application based on the Existing Land Use Regulations, the Development Plan or any Subsequent Land Use Regulation not in conflict with the Development Plan. The granting of one such change shall not obligate the City to grant other similar changes.

4.4 Reservations of Authority. Any other provision of this Agreement to the contrary notwithstanding, the Development of the Property shall be subject to subsequently adopted ordinances or resolutions ("Subsequent Land Use Regulations" or sometimes referred to as "Reservation of Authority") on the following topics:

(i) Processing Fees imposed by the City to cover the estimated or actual costs to the City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, which fees are charged to reimburse the City's lawful expenses attributable to such applications, processing, permitting, review and inspection and which are in force and effect on a general basis at such time as said approvals, permits, review, inspection or entitlement are granted or conducted by the City.

(ii) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(iii) Regulations governing engineering and construction standards and specifications including, any and all uniform codes adopted by the State of California and subsequently adopted by the City.

(iv) Regulations that do not conflict with the Development Plan. The term "do not conflict" means new rules, regulations, and policies which: (a) do not modify the Development Plan, including, without limitation, the permitted land uses, the density or intensity of use, the phasing or timing of Development of the Project, the maximum height and size of proposed buildings on the Property, provisions for Dedication of land for public purposes and Development Exactions, except as expressly permitted elsewhere in this Agreement, and standards for design, development and construction of the Project; (b) do not prevent Owner from obtaining any Subsequent Development Approvals, including, without limitation, all necessary approvals, permits, certificates, and the like, at such dates and under such circumstances as the Owner would otherwise be entitled by the Development Plan; (c) do not prevent Owner from

commencing, prosecuting, and finishing grading of the land, constructing public and private improvements, and occupying the Property, or any portion thereof, all at such dates and schedules as Owner would otherwise be entitled to do so by the Development Plan; or (d) those Regulations which are in conflict with the Development Plan but the Owner has given written consent to the application of such regulations to Development of the Property.

(v) The City shall not be prohibited from applying to the Development new rules, regulations and policies that do not affect permitted uses of the land, density, design, public improvements (including construction standards and specifications) or the rate of development of the Development, nor shall the City be prohibited from denying or conditionally approving any subsequent development project application (unrelated to the Project) on the basis of such existing new rules, regulations and policies.

4.5 Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of the City possess authority to regulate aspects of the development of the Property separately from or jointly with the City, and this Agreement does not limit the authority of such other public agencies. The City shall reasonably cooperate with other public agencies processing Development Approvals for the Project.

4.6 Tentative Subdivision Map Extension. The term of any tentative subdivision map filed in connection with the Project may be extended in accordance with any applicable provisions of the Subdivision Map Act or the DHSMC to be coterminous with the Term of this Agreement.

4.7 Satisfaction of Conditions of Approval. Owner shall comply with any and all conditions of approval for any entitlement, permit, or license it receives from the City in connection with the Project.

4.8 Exactions. Owner shall pay or provide, as the case may be, all exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-site or off-site improvements, construction requirements for public improvements, facilities, or services required of the Project or Property, whether such requirements constitute subdivision improvements, mitigation measures in connection with environmental review, or impositions made under any applicable ordinance or other applicable regulation.

4.9 Development Impact Fees. Owner shall pay for all development impact fees that are designed to pay for new or expanded public facilities needed to serve, or to mitigate the adverse effects of, a given development project (including any species protection or habitat preservation or conservation mitigation fees). The development impact fees shall remain fixed for a period of ten (15) years from the Effective Date at the rates existing as of the Effective Date, after which the development impact fees shall be assessed at the rates in effect as of the date the development

impact fees become due and payable. The development impact fees shall be paid for individual Project buildings prior to issuance of a building permit for said building.

4.10 Development Milestones. Owner shall make best efforts to ensure that Milestones 1, 2, and 3 as set forth in Exhibit C are met within five (5), ten (10) and fifteen (years) of the Effective Date, respectively. City acknowledges that development of the Project is a multifaceted undertaking involving several public agency approvals and complex financial arrangements. Therefore failure to meet the Development Milestones shall not constitute a default of this Agreement.

4.11 Leased Buildings. In the event, as part of the Project, Owner intends to build additional buildings, other than for Owner's use of cultivation, manufacturing, testing, and distribution, or as a dispensary or dispensaries, so long as the dispensary or dispensaries are in partnership with one of the City's existing approved CUP dispensary licenses or an approved new license is issued by the City, to the extent contemplated by the, Development Approvals pursuant to DHSMC Chapters 17.180 Marijuana Facilities Operation and Location, 3.35 Medical Marijuana Cultivation Tax, and 5.50 Marijuana Facilities Regulatory Permit and all applicable state laws, rules, and regulations of medical marijuana, Owner shall designate each individual additional building and surrounding area as separate lots on the recorded map, consistent with the Subdivision Map Act.

ARTICLE 5. PUBLIC BENEFITS.

5.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs which will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on Owner which should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project

5.2 Developer Fee. Applicant will be using the Metrc® system RFID or equivalent tagging program approved by the City Manager to identify and monitor all medical marijuana plants that will be cultivated at the Owner's properties.

5.3 Jobs and Wage Creation.

5.3.1 Local Hiring. Owner agrees to use its reasonable efforts to hire qualified City residents for jobs at the Project. Owner shall also use reasonable efforts to retain the services of qualified contractors and suppliers who are located in the City or who employ a significant number of City residents. At least 20 percent of the Project's workforce shall consist of residents of the City. Job announcements shall be posted at

City Hall, along with proof that the job announcements were advertised in at least two newspapers published, printed or distributed in the City and on various social media sites accessible to the general public. In addition, Owner shall make a good faith effort to advertise job announcements at local job fairs, on local radio and through public agencies and organizations such as but not limited to the Riverside County Workforce Development Center and the Desert Hot Springs Chamber of Commerce.

5.3.2 Mandatory Payment of Good Wage Rate. Owner agrees to pay all employees of the Project a Good Wage Rate. A "Good Wage Rate" is:

January 1, 2018 through December 30, 2018: $13 per hour.
January 1, 2019 through December 30, 2019: $14 per hour.
January 1, 2020 through December 30, 2020: $15 per hour.

Commencing January 1, 2021, and for each January 1 of each successive year, the Good Wage Rate shall be increased in proportion to the increase during the preceding calendar year in the Consumer Price Index. However, if the state or federal minimum wage rises to the level of any of the Good Wage Rates set forth above, then the Good Wage Rate for the subject period shall automatically increase to an amount equal to two dollars ($2.00) above the highest of the two minimum wages.

5.4 Development Agreement Administrative Fee Deposit. Owner shall be responsible for all of the City's actual costs associated with processing Development Approvals for the Project including, but not limited to, costs associated with the City's review and processing of the Project, including but not limited to reviewing the Project's entitlements, including all environmental clearance documents, permits, licenses and all documents evidencing compliance with state and local law. As such, Owner has deposited $20,000 with the City for the purpose of reimbursing the City for any associated costs with processing the Project, as detailed above and reimbursing the City for its actual costs incurred in drafting and processing this Agreement and for the City's actual costs incurred in processing future Development Approval applications. Owner acknowledges and agrees that this payment is merely a deposit, and is not a cap on the amount of the City's actual costs incurred in processing this Agreement and future Development Approval applications.

5.5 Payment of Marijuana Taxes.

5.5.1 Amount of Cultivation Taxes. Unless otherwise agreed upon pursuant to a separate agreement, pursuant to Chapter 3.33 or 3.35 of the DHSMC, as applicable, Owner shall pay City the annual Cultivation Taxes of $25.00 per square foot for the first 3,000 square feet and then $10.00 per square foot thereafter. This Cultivation Tax shall remain at $25.00 per square foot for the first 3,000 square feet and then $10.00 per square foot thereafter for a period of ten (10) years, after which the Cultivation Tax will be assessed at the rate in effect as of the date the Cultivation Tax becomes due and payable. "In connection with the cultivation" of marijuana, "space" shall not include the walkways, vertical space or space adjacent to where the plants are grown which are not

used for growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, curing or drying marijuana or storing any products, supplies or equipment related to any such activities. With respect to curing or storing or marijuana, "in connection" shall mean the space utilized for the curing and storing of marijuana only and not the adjacent walkways or space unless such walkways or space is being used for growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, or drying marijuana or storing any products, supplies or equipment related to any such activities.

5.5.2 Schedule of Payment of Cultivation Tax. The Cultivation Tax shall be payable biennially, on or before December 31 and June 30 every year. Notwithstanding the foregoing, as an accommodation to the city, commencing one year after the issuance of the first certificate of occupancy for the first building of the project (the Cultivation Taxes having been paid biennially during the first year of operation of the project), for the next five (5) years of operation, owner shall pay the Cultivation Taxes every ninety (90) days. After this time, the schedule of the Cultivation Taxes payment shall return to the biennial schedule of being paid on or before December 31 and June 30 of every year. Accounting of the amount of Cultivation Taxes owed to the City shall be prepared in accordance with customary and reasonable accounting practices approved by the City.

5.5.3 All other taxes shall be paid in accordance with the DHSMC and State law, as both may be amended from time to time.

5.5.4 Infrastructure Improvements.

5.5.4.1 [Reserved]

5.5.4.2 The Project will incorporate the following infrastructure benefits:

5.5.4.2.1 Installation of Mission Springs Water District Water & Sewer Facilities (approx. value of $9,000,000).

5.5.4.2.2 Assistance with fees required by the Federal Emergency Management Agency (“FEMA”) with respect to processing and approval of a Conditional Letter of Map Revision and a Letter of Map Revision relating to the Project (approx. value of $500,000).

5.5.4.2.3 Importing fill material, raising development pads and other flood protection features in connection with the Project (approx. value of $2,000,000).

5.5.4.2.4 Roadway improvements on Varner Road between Property and Palm Drive (approx. value of $750,000)

5.5.4.2.5 Contribution of $40,000 to City in furtherance of proposed City Entry/Landscape Project on Palm Drive due to City prior to the City's issuance of Project's first building permit.

5.5.4.2.6 Upgrading dry utilities and extending same to Property.

5.5.4.2.7 Upgrading two thirty foot (30') transmission mainlines provided by Southern California Gas.

5.5.4.2.8 Upgrading Southern California Edison facilities to serve the Project.

ARTICLE 6. [Reserved]

ARTICLE 7. REVIEW FOR COMPLIANCE.

7.1 Periodic Review. The City Council shall review this Agreement annually, on or before each anniversary of the Effective Date, in order to ascertain Owner's good faith compliance with this Agreement. During the periodic review Owner shall, upon request by the Planning Department, be required to demonstrate good faith compliance with the terms of the Agreement, through submitting an annual monitoring report, records, or equivalent written materials to the Planning Department, as specified in a written request from City to Owner. The Planning Department will schedule a hearing on the periodic review of the Development Agreement on or following the anniversary of the Effective Date, but Owner has no obligation to compel such hearing, and no implication will be made to Owner's detriment if a hearing is not in fact held. The Owner shall document any request for an extension of the term due to delays beyond the control of the Owner (see 12.11 Force Majeure). Owner shall submit an annual review and administration fee deposit not to exceed the City's estimated internal and third party costs associated with the review and administration of this Agreement during the succeeding year, consistent with Section 12.28 below. The City shall provide owner said estimate a reasonable time in advance of the annual review and administration fee deposit being due. In the event the City's actual internal and third party costs are less than the estimated costs, Owner's fee deposit in excess of the City's actual costs will be refunded to Owner within thirty (30) days of the conclusion of the periodic review.

7.2 Special Review. The City Council may order a special review of compliance with this Agreement at any time. The Planning Director or his or her designee shall conduct such special review. During a special review, the Owner shall be

required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on the Owner.

7.3 Review Hearing. At the time and place set for the review hearing, the Owner shall be given an opportunity to be heard. If the City Council finds, based upon substantial evidence, that the Owner has not complied in good faith with the terms or conditions of this Agreement, the City Council may terminate this Agreement notwithstanding any other provision of this Agreement to the contrary, or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Code of Civil Procedure Section 1094.5.

7.4 Certificate of Agreement Compliance. If, at the conclusion of a periodic or special review, the Owner is found to be in compliance with this Agreement, the City shall issue a Certificate of Agreement Compliance ("Certificate") to the Owner stating that after the most recent periodic or special review, and based upon the information known or made known to the Planning Director and City Council, that (i) this Agreement remains in effect and (ii) the Owner is not in default.

The City shall not be bound by a Certificate if a default existed at the time of the periodic or special review, but was concealed from or otherwise not known to the Planning Director and City Council, regardless of whether or not the Certificate is relied upon by assignees or other transferees or the Owner.

7.5 Failure to Conduct Review. The City's failure to conduct a periodic review of this Agreement shall not constitute a breach of this Agreement.

7.6 Cost of Review. The costs incurred by City in connection with the periodic reviews shall be borne by Owner.

ARTICLE 8. ANNEXATION INTO DISTRICTS

8.1 Owner agrees to the Subject Property being annexed into any current or future Community Facilities District, Community Services District, or any other tax district which would pertain to the Property

ARTICLE 9. DEFAULTS AND REMEDIES.

9.1 Remedies in General. It is acknowledged by the parties that the City would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof, except as hereinafter expressly provided. Subject to extensions of time by mutual consent in writing, failure or delay by either party to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days' notice in writing specifying the

nature of the alleged default and the manner in which said default may be satisfactorily cured during any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings. Notwithstanding the foregoing to the contrary, if the alleged default is of such a nature that it cannot be cured within thirty (30) days, the alleged defaulting party shall not be deemed in default as long as such party commences to cure such default within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

After notice and expiration of the thirty (30) day period, the other party to this Agreement, at its option, may institute legal proceedings pursuant to this Agreement.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that the City shall not be liable in monetary damages, unless expressly provided for in this Agreement, to the Owner, to any mortgagee or lender, or to any successors in interest of the Owner or mortgagee or lender, or to any other person, and the Owner covenants on behalf of itself and all successors in interest to the Property or any portion thereof, not to sue for damages or claim any damages:

(i) For any breach of this Agreement or for any cause of action which arises out of this Agreement: or

(ii) For the impairment or restriction of any right or interest conveyed or provided under, with, or pursuant to this Agreement, including, without limitation, any impairment or restriction which the Owner characterizes as a regulatory taking or inverse condemnation; or

(iii) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

Nothing contained herein shall modify or abridge the Owner's rights or remedies (including its rights for damages, if any) resulting from the exercise by the City of its power of eminent domain. Nothing contained herein shall modify or abridge the Owner's rights or remedies (including its rights for damages, if any) resulting from the grossly negligent or malicious acts of the City and its officials, officers, agents and employees. Nothing herein shall modify or abridge any defenses or immunities available to the City and its employees pursuant to the Government Tort Liability Act and all other applicable statutes and decisional law.

Except as set forth in the preceding paragraph relating to eminent domain, the Owner's remedies shall be limited to those set forth in this Section 9.1, Section 9.2, and Section 9.5.

Notwithstanding anything to the contrary contained herein, the City covenants as provided in Civil Code Section 3300 not to sue for or claim any

consequential damages or, in the event all or a portion of the Property is not developed, for lost profits or revenues which would have accrued to the City as a result of the development of the Property.

9.2 Specific Performance. The parties acknowledge that money damages and remedies at law are inadequate, and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(i) Except as provided in Sections 9.1 and 9.5, money damages are unavailable against the City as provided in Section 9.1 above.

(ii) Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, the Owner may be foreclosed from other choices it may have had to use the Property or portions thereof. The Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate the Owner for such efforts; the parties acknowledge and agree that any injunctive relief may be ordered on an expedited, priority basis.

9.3 Release. Except for those remedies set forth in Sections 9.1, 9.2 and 9.5, the Owner, for itself, its successors and assignees, hereby releases the City, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, based or asserted, pursuant to Article 1, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

The Owner acknowledges that it may have suffered, or may suffer, damages and other injuries that are unknown to it, or unknowable to it, at the time of its execution of this Agreement. Such fact notwithstanding, the Owner agrees that the release provided in this Section 9.3 shall apply to such unknown or unknowable claims and damages. Without limiting the generality of the foregoing, the Owner acknowledges the provisions of California Civil Code Section 1542, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Owner hereby waives, to the maximum legal extent, the provisions

of California Civil Code Section 1542 and all other statutes and judicial decisions of similar effect.

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Initial

9.4 Termination of Agreement for Default of the City. The Owner may terminate this Agreement only in the event of a default by the City in the performance of a material term of this Agreement and only after providing written notice to the City of default setting forth the nature of the default and the actions, if any, required by the City to cure such default and, where the default can be cured, the City has failed to take such actions and cure such default within sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such sixty (60) day period and to diligently proceed to complete such actions and cure such default. In such a situation, notwithstanding the termination of this Agreement, all Development Approvals shall remain in full force and effect.

9.5 Attorneys' Fees and Costs. In any action or proceeding between the City and the Owner brought to interpret or enforce this Agreement, or which in any way arises out of the existence of this Agreement or is based upon any term or provision contained herein, the "prevailing party" in such action or proceeding shall be entitled to recover from the non-prevailing party, in addition to all other relief to which the prevailing party may be entitled pursuant to this Agreement, the prevailing party's reasonable attorneys' fees and litigation costs, in an amount to be determined by the court. The prevailing party shall be determined by the court in accordance with California Code of Civil Procedure Section 1032. Fees and costs recoverable pursuant to this Section 9.5 include those incurred during any appeal from an underlying judgment and in the enforcement of any judgment rendered in any such action or proceeding.

9.6 Owner Default. No building permit shall be issued or building permit application accepted for any structure on the Property after Owner is determined by the City to be in default of the terms and conditions of this Agreement until such default thereafter is cured by the Owner or is waived by the City. If the City terminates this Agreement because of Owner's default, then the City shall retain any and all benefits, including money or land received by the City hereunder.

ARTICLE 10. THIRD PARTY LITIGATION.

10.1 General Plan Litigation. The City has determined that this Agreement is consistent with its General Plan. The Owner has reviewed the General Plan and concurs with the City's determination.

The City shall have no liability under this Agreement or otherwise for any failure of the City to perform under this Agreement, or for the inability of the Owner to develop the Property as contemplated by the Development Plan, which failure to perform or inability to develop is as the result of a judicial determination that the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law, or that this Agreement or any of the City's actions in adopting it were invalid, inadequate, or not in compliance with law provided that the City is unable to cure any such defect in the General Plan within three hundred and sixty-five (365) days from the later of entry of final judgment or decision on appeal. Neither party shall contend in any administrative or judicial proceeding that the Agreement or any Development Approval is unenforceable based upon federal, state or local statutes, ordinances or regulations in effect on the Effective Date.

10.2 Hold Harmless Agreement. Owner hereby agrees to, and shall hold City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Owner or Owner's contractors, subcontractors, agents, or employees operations under this Agreement, whether such operations be by Owner, or by any of Owner's contractors, subcontractors, agents, or employees operations under this Agreement, whether such operations be by Owner, or by any of Owner's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Owner or any of Owner's contractors or subcontractors. Owner agrees to and shall defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid operations.

10.3 Indemnification. Owner shall defend, indemnify and hold harmless City and its agents, officers and employees against and from any and all liabilities, demands, claims, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), which any or all of them may suffer, incur, be responsible for or pay out as a result of or in connection with any challenge to the legality, validity or adequacy of any of the following: (i) this Agreement and the concurrent and subsequent permits, licenses and entitlements approved for the Project or Property; (ii) the environmental impact report, mitigated negative declaration or negative declaration, as the case may be, prepared in connection with the development of the Property; and (iii) the proceedings undertaken in connection with the adoption or approval of any of the above. In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement or any portion thereof as set forth herein, the parties shall mutually cooperate with each other in defense of said action or proceeding. Notwithstanding the above, the City, at is sole option, may tender the complete defense of any third party challenge as described herein. In the event the City elects to contract with special counsel to provide for such a defense, the City shall meet and confer with Owner regarding the selection of

counsel, and Owner shall pay all costs related to retention of such counsel.

10.4 Environmental Contamination. The Owner shall indemnify and hold the City, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of the Owner, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors, excepting any acts or omissions of City as successor to any portions of the Property dedicated or transferred to City by Owner, for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and the Owner shall defend, at its expense, including attorneys' fees, the City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. The City may in its discretion participate in the defense of any such claim, action or proceeding.

The provisions of this Section 10.4 do not apply to environmental conditions that predate Owner's ownership or control of the Property or applicable portion; provided, however, that the foregoing limitation shall not operate to bar, limit or modify any of Owner's statutory or equitable obligations as an owner or seller of the Property.

10.5 The City to Approve Counsel. With respect to Sections 10.1 through 10.4, the City reserves the right to approve the attorney(s) which the Owner selects, hires or otherwise engages to defend the City hereunder, which approval shall not be unreasonably withheld.

10.6 Accept Reasonable Good Faith Settlement. With respect to Article 10, the City shall not reject any reasonable good faith settlement. If the City does reject a reasonable, good faith settlement that is acceptable to the Owner, the Owner may enter into a settlement of the action, as it relates to the Owner, and the City shall thereafter defend such action (including appeals) at its own cost and be solely responsible for any judgments rendered in connection with such action. This Section 10.6 applies exclusively to settlements pertaining to monetary damages or damages which are remedial by the payment of monetary compensation. The Owner and the City expressly agree that this Section 10.6 does not apply to any settlement that requires an exercise of the City's police powers, limits the City's exercise of its police powers, or affects the conduct of the City's municipal operations.

10.7 Survival. The provisions of Sections 4.7 and Sections 10.1 through 10.6 inclusive, shall survive the termination or expiration of this Agreement.

ARTICLE 11. THIRD PARTY LENDERS, ASSIGNMENT & SALE.

11.1 Encumbrances. The parties hereto agree that this Agreement shall not prevent or limit the Owner, in any manner, at the Owner's sole discretion, from

encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property.

11.2 Lender Requested Modification/Interpretation. The City acknowledges that the lenders providing such financing may request certain interpretations and modifications of this Agreement and agrees upon request, from time to time, to meet with the Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement, provided, further, that any modifications of this Agreement are subject to the provisions of Section 11.5.

11.3 Mortgagee Privileges/Rights. Any Mortgagee shall be entitled to the following rights and privileges:

(i) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value; and

(ii) Any Mortgagee that has submitted a written request to the City in the manner specified herein for giving notices shall be entitled to receive written notification from the City of any default by the Owner in the performance of the Owner's obligations under this Agreement.

(iii) If the City timely receives a request from a Mortgagee requesting a copy of any notice of default given to the Owner under the terms of this Agreement, the City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to the Owner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed the Owner under this Agreement.

11.4 Assignment, Sale and Transfer of Interest in the Property and this Agreement.

11.4.1 Assignment. The rights and obligations of Owner hereunder shall not be assigned or transferred, except that on thirty (30) days written notice to City, owner may assign all or a portion of Owners rights and obligations there under to any person or persons, partnership or corporation who purchases all or a portion of Owners right, title and interest in the Property, provided such assignee or grantee assumes in writing each and every obligation of Owner hereunder yet to be performed, and further provided that Owner obtains the written consent of City to the assignment, which consent shall not be unreasonably withheld. The notice to City shall include the identity of any such assignee and a copy of the written assumption of the assignor's obligations

hereunder pertaining to the portion assigned or transferred. After such notice and the receipt of such consent, the assignor shall have no further obligations or liabilities hereunder. The City Manager shall act on behalf of City regarding any actions concerning the assignment of this Agreement. Owner may appeal to the City Council, the action of the City Manager regarding the assignment of this Agreement.

11.4.2 Effect of Subsequent Amendments and Defaults by Transferee. Any amendment to this Agreement between the City and a transferee shall only affect the portion of the Property owned by such transferee, and a default by any transferee shall only affect that portion of the Property owned by such transferee.

11.4.3 Lender's Rights and Obligations. Nothing contained in this Section 11.4 shall prevent a transfer of the Property, or any portion thereof, to a lender as a result of a foreclosure or deed in lieu of foreclosure. Any successor in interest (including the lender) acquiring the Property, or any portion thereof, as a result of foreclosure or a deed in lieu of foreclosure, shall take such Property subject to the rights and obligations of the Owner under this Agreement; provided, however, in no event shall such successor be liable for any defaults or monetary obligations of the Owner arising under this Agreement prior to acquisition of title to the Property by such successor. In no event shall any such successor be entitled to Development Approvals until all fees due under this Agreement relating to the portion of the Property acquired by such successor have been paid to the City.

ARTICLE 12. MISCELLANEOUS PROVISIONS.

12.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the City Clerk within the period required by Government Code Section 65868.5.

12.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements that are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement, provided, however, City at its option may rely on statements by Owner's agents at the public hearings leading to the City's approval of the project or on written documents by Owner's agents that are a part of the public record.

12.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. The foregoing notwithstanding, the provision of the public benefits set forth in Article 5, including the payment of the fees

set forth therein, are essential elements of this Agreement and the City would not have entered into this Agreement but for such provisions, and therefore in the event that any portion of such provisions are determined to be invalid, void or unenforceable, at the City's option this entire Agreement shall terminate and from that point on be null and void and of no force and effect whatsoever.

The foregoing notwithstanding, the development rights set forth in Article 4 of this Agreement are essential elements of this Agreement and the Owner would not have entered into this Agreement but for such provisions, and therefore in the event that any portion of such provisions are determined to be invalid, void or unenforceable, at the Owner's option this entire Agreement shall terminate and from that point on be null and void and of no force and effect whatsoever.

12.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

12.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

12.6 Singular and Plural; Gender, and Person. Except where the context requires otherwise, the singular of any word shall include the plural and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and neuter, and vice versa, and a reference to "person" shall include, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.

12.7 Joint and Several Obligations. If at any time during the term of this Agreement any part of the Property is jointly owned, in whole or in part, by more than one Owner, all obligations of such Owners under this Agreement as to that portion of the Property jointly owned shall be joint and several, and the default of any such Owner shall be the default of all such Owners. The foregoing notwithstanding, no Owner of a single lot which has been finally subdivided and sold to such Owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided herein.

12.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

12.9 Waiver. Failure by a party to insist upon the strict performance of

any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

12.10 No Third Party Beneficiaries. The only parties to this Agreement are Owner and the City. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.

12.11 Force Majeure. If delays are caused by unforeseen events beyond the control of the Owner, such delays will entitle the Owner to an extension of time as provided in this Section and Article 7. Such unforeseen events ("Force Majeure") shall mean war, insurrection, acts of God, local, state or national emergencies, strikes and other labor difficulties beyond the party's control, or any default by the City hereunder, which Force Majeure event substantially interferes with the development or construction of the Project.

In the case of a Force Majeure event, any and all time periods referred to in this Agreement shall be extended for a period equal to any delay to the Project caused by any such Force Majeure event; provided, however, that no such time period shall be extended beyond a cumulative total of five (5) years.

Extensions of time, when granted, will be based upon the effect of delays on the Project. Extensions will not be granted for: (1) delays of three days or less, or (2) for non-controlling delays to minor portions of the Project, or (3) for delays due to the Owner's inability to obtain financing with respect to the Development of the Project.

Owner shall in writing promptly notify City upon learning of any such Force Majeure event. The Planning Director shall ascertain the facts and the extent of the delay and his findings thereon shall be included in the Owner's annual monitoring report unless Owner disputes the findings and requests that the period of delay be heard and determined as a part of the annual review process.

12.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

12.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land.

Each covenant to do or refrain from doing some act hereunder with regard to development of the Property:

(i) is for the benefit of and is a burden upon every portion of the Property;

(ii) runs with the Property and each portion thereof; and

(iii) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof from and after recordation of this Agreement, it shall impute such notice to all persons as is afforded by the recording laws of this State.

The burdens of the Agreement shall be binding upon, and the benefits of the Agreement shall inure to all successors in interest to the parties to this Agreement.

12.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

12.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and prosecuted in the Superior Court of the County of Riverside, State of California, and the parties hereto waive all provisions of federal or state law or judicial decision providing for the filing, removal or change of venue to any other state or federal court, including, without limitation, Code of Civil Procedure Section 394.

12.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between the City and the Owner is that of a government entity regulating the development of private property and the owner of such property.

12.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or

consummate the transactions contemplated by this Agreement.

12.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by the City of its power of eminent domain.

12.19 Agent for Service of Process. In the event the Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer, resident of the State of California, or if it is a foreign corporation, then the Owner shall file, upon its execution of this Agreement, with the Community Development Director or his or her designee, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon the Owner. If for any reason service of such process upon such agent is not feasible, then in such event the Owner may be personally served with such process out of this County and such service shall constitute valid service upon the Owner. The Owner is amenable to the process so described, submits to the jurisdiction of the Court so obtained, and waives any and all objections and protests thereto.

12.20 Authority to Execute. The person or persons executing this Agreement on behalf of the Owner warrants and represents that he/she/they have the authority to execute this Agreement on behalf of his/her/their corporation, partnership or business entity and warrants and represents that he/she/they has/have the authority to bind the Owner to the performance of its obligations hereunder.

Owner shall each deliver to City on execution of this Agreement a certified copy of a resolution and or minute order of their respective Board of Directors or appropriate governing body authorizing the execution of this Agreement and naming the officers that are authorized to execute this Agreement on its behalf. Each individual executing this Agreement on behalf of his or her respective company or entity shall represent and warrant that:

12.20.1 The individual is authorized to execute and deliver this Agreement on behalf of that company or entity in accordance with a duly adopted resolution of the company's board of directors or appropriate governing body and in accordance with that company's or entity's articles of incorporation or charter and bylaws or applicable formation documents; and

12.20.2 This Agreement is binding on that company or entity in accordance with its terms; and

12.20.3 The company or entity is a duly organized and legally existing company or entity in good standing; and

12.20.4 The execution and delivery of this Agreement by that company or entity shall not result in any breach of or constitute a default under any mortgage, deed of trust, loan agreement, credit agreement, partnership agreement, or other contract or instrument to which that company or entity is party or by which that company or entity may be bound.

12.21 Subsequent Amendment to Authorizing Statute. This Agreement has been entered into in reliance upon the provisions of the statute governing development agreements (Government Code Sections 65864 through 65869.5, inclusive) in effect as of the Effective Date. Accordingly, subject to Sections 3.6 and 4.4 above, to the extent the subsequent amendments to the Government Code would affect the provisions of this Agreement, such amendments shall not be applicable to the Agreement unless necessary for this Agreement to be enforceable or unless so provided by the amendments.

12.22 Estoppel Certificate. For and in consideration of entering into this Agreement, the parties hereto acknowledge the receipt of good and valuable consideration. This paragraph shall constitute an Estoppel Certificate and shall be an independent agreement among the parties which is intended to and shall survive any subsequent determination that this Agreement is invalid for any reason, by a final court decision, having jurisdiction thereof. Owner represents to the City that it has no actual knowledge of any Claims, as herein below defined, against City specifically pertaining to the matters set forth in this Agreement. For purposes of this Section, "Claims" are defined as all known claims, fees, demands, costs, damages, obligations, expenditures, remedies, liens, rights or arbitration, rights of action and/or causes of action, whether compensatory or punitive, legal or equitable. This Estoppel Certificate legally bars Owner from filing Claims of which it had actual knowledge at the time of the approval by the City of this Agreement.

12.23 Nexus/Reasonable Relationship Challenges. Owner consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, payment of any kind of fee whatsoever, policies or programs set forth in this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

12.24 Owner Compliance with Laws. Owner hereby agrees to comply with all applicable state and local laws, regulations, rules and policies.

12.25 No Damages Relief Against City. The parties acknowledge that the City would not have entered into this Agreement had it been exposed to damage claims from Owner, or Owners successors in interest, assigns, partners, or anyone acting on behalf of the Owner for any breach thereof. As such, the parties agree that in no event

shall Owner, or Owners successors in interest, assigns, partners, or anyone acting on behalf of the Owner be entitled to recover damages against City for breach of this Agreement.

12.26 Laws. Owner agrees to comply with all applicable state, regional, and local laws, regulations, polices and rules. In addition, Owner further agrees to comply with all issued entitlements, permits, licenses, including any and all applicable development standards.

12.27 Compliance with Conditions of Approval. Owner agrees to comply with and fulfill all conditions of approval for any and all entitlement, permits, and/or licenses it receives form the City. All conditions of approval for all entitlements, permits and/or licenses are hereto incorporated.

12.28 Deposit with the City. Owner shall be responsible for all of the costs associated the Project, including but not limited to costs associated with the City's review and processing of the Project, including but not limited to reviewing the Project's entitlements, including all environmental clearance documents, permits, licenses and all documents evidencing compliance with state and local law, and as such Owner agrees to deposit good and sufficient funds with the City whereby Owner shall deposit money with the City for the purpose of reimbursing the City for any associated costs with processing the Project, as detailed in this Agreement.

12.29 Owner agrees to comply with all applicable provisions of any current or future applicable marijuana laws, including SB 94, as duly adopted, including any and all development standards, license and revocation procedures, and the like. Should there be anything in state law, including but not limited to SB 94 which contradicts any provision in this Agreement, state law shall control.

12.30 Covenants Running with the Land**.** The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Owner and every purchaser, lessee, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, leased, assigned or transferred to it. Any such purchaser, lessee, assignee or transferee shall observe and fully perform all of the duties and obligations of an Owner contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates written above.

CITY OF DESERT HOT SPRINGS

By:_____
Scott Matas, Mayor

ATTEST:

By:_____
Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

By:_____
Jennifer Mizrahi, City Attorney

DESERT LAND VENTURES III, LLC

***By:_____**
Richard Sax, Principal

***Signatures must be notarized**

***By:_____**
Sean Matsler, DLV III Legal Counsel

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

For APN/Parcel ID(s):

EXHIBIT B

MAP SHOWING PROPERTY AND ITS LOCATION

EXHIBIT C

DEVELOPMENT MILESTONES

Milestone 1 (within five [5] years of Effective Date)

- FEMA Approval of CLOMR Application
- Record 1st Final Map
- Approval of Phase 1 Mass/Rough Grading Permit
- Approval of Phase 1 Backbone Infrastructure Improvement Plans (Street, Water, Sewer & Storm Drain)
- Approval of one Conditional Use Permit for Marijuana Use

Milestone 2 (within ten [10] years of Effective Date)

- FEMA Approval of LOMR Application
- Record Phase 2 Final Map
- Approval of Phase 2 Mass/Rough Grading Permit
- Approval of Phase 2 Backbone Infrastructure Improvement Plans (Street, Water, Sewer & Storm Drain)
- Issue a minimum of one Building Permit for Phase 1 Development

Milestone 3 (within fifteen [15] years of Effective Date)

- Issue a minimum of one Building Permit for Phase 2 Development